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No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

ESTATE OF DAVID MILLER
FRED DAVIS
GERTRUDE DAVIS GOROD

Petitioners,

v.

EDITH TABACHNICK
APPEALS COURT
BRISTOL COUNTY PROBATE COURT

Respondents.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Fred Davis
Gertrude Davis Gorod
353 Bryant Street
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57 pp

ISSUES PRESENTED

I.

Should this Court Grant Certiorari to protect the petitioners' rights as set forth under the United States Constitution Amendments V and XIV.

Should this Court grant Certiorari to restore the petitioners' rights as set forth under the Massachusetts Civil Rights Act, Massachusetts Declaration of Rights Article XI, Massachusetts Rules of Civil Appellate Procedure, Crimes against the Elderly Massachusetts General Law 19A section 14 "Financial Exploitation", rights of which the petitioners were deprived of by the inferior Courts in Massachusetts.

II.

United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty or property without due process of law".

III.

United States Constitution Amendment XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States: nor shall any State deprive any person of life, liberty or property without due process of law: nor deny to any person within its jurisdiction the equal protection of the law:.

IV.

Civil Rights Petitioners were discriminated because of their age and religion.

V.

Massachusetts Civil Rights Act, M.G.L. Chapter 12 § 111 protects citizens from being deprived of their United States Constitutional Rights by individuals and allows the filing of a Civil Action against these parties.

VI.

Massachusetts Declaration of Rights: Article XI: **remedy by recourse of the laws; obtaining of right and justice, completely promptly.** "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it: Completely, and without denial: promptly, and without delay:...."

VII.

Massachusetts Rules of Civil Appellate

Procedure Rule 3 states in pertinent part: "Filing Notice of Appeal. An appeal permitted by law from the lower court shall be taken by filing a notice of appeal with the clerk of the lower Court....."

VIII.

Crimes Against the Elderly Massachusetts General Laws Chapter 19A § 14 "Financial Exploitation: "an act or omission by another person, which causes a substantial monetary or property loss to an elderly which gain would otherwise benefit the elderly.

IX.

Joseph S. Provanzano (Edith Tabachnick's 5th attorney) and Associates has filed another frivolous action in the Bristol County Court in Taunton, Massachusetts and the Bristol County Court is again refusing to assembly the record and forward it to the Appeals Court. Compelling the petitioners to go through the same legal process again.

Joseph S. Provanzano, Provanzano & Associates have violated the Massachusetts Canon Rules and the Massachusetts Attorney's Oath General Laws 221 section 38."You (Name) solemmly swear that you will do no falsehood, nor consent to the doing of any in Court." Mr. Provanzano told falsehoods to the Court engaged in conduct involving dishonesty, fraud, deceit and misrepresenting the facts to the court.

X.

Judge La Staiti abused her power when she would not allow petitioners the right to Discovery as set forth in Massachusetts Rules of Civil Procedure Rule 26 (a) "Parties may obtain discovery by one or more of the following methods (b) depositions upon oral examinations...written interrogatories. (the same thing is happening again she will not allow the taking of Edith Tabachnick deposition nor would she allow her to answer petitioners' interrogatories)

XI.

The Massachusetts Supreme Judicial Court erred in its decision based on the facts, evidence and oral argument.

XII.

The Public Interest is involved, as the Massachusetts inferior Courts are completely out of control and individuals in Massachusetts are being deprived of their rights as set forth in both the United States and Massachusetts Constitutions along with other statutes.

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Petitioners, Fred Davis and Gertrude Davis Gorod, respectfully prays that a writ of certiorari issue to review decision of the Massachusetts Supreme Judicial Court and grant them the following: 1. reinstatement of the administrator 2. the right to sell the property at price obtained in March of 1996 3. respondent, Edith Tabachnick is to return the items she took from the petitioner, Gertrude Davis Gorod 4. respondent Edith Tabachnick is to return all items that she took from the Estate of David Miller, and she is to pay to the petitioner, Gertrude Davis Gorod legal fees of $16,000.00, for defending frivolous court actions, and any other relief the court deems appropriate.

OPINIONS BELOW

There was no written decision from the Bristol County Probate & Family Court. Judge La Staiti in open court said that the administrator is to be removed and the property is to be sold.

There was no written decision from the Bristol County Probate & Family Court, regarding the selling of the property, again in open court the petitioners' motion to sell the property was denied.

The Appeals Court denied the petitioners' Zatsky Petition attached (APP. p.17).

Massachusetts Supreme Court without hearing

petition was denied attached (APP. p.19).

Massachusetts Supreme Judicial Court ordered Judgment Affirmed attached (APP. P.20).

JURISDICTION

July 3, 1997, the Massachusetts Supreme Judicial Court ordered Judgment Affirmed.

This petition is filed within the 90 days of the Massachusetts Supreme Judicial Court's decision.

This Court's jurisdiction is invoked under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

"cannot be deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment to the United States Constitution provides:

"All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any

person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the law".

STATEMENT OF THE CASE

The respondent, Edith Tabachnick is not a legal heir to the Estate of David Miller. She is a member of a religious cult.

Edith Tabachnick after the funeral of the late David Miller, broke into his late residence and removed $250,000. in items belonging to the petitioner, Gertrude Davis Gorod, one of the legal heirs to the Estate of David Miller.

Respondent, Tabachnick also removed other items from the estate in the amount of over a million dollars and these items were taken over state lines.

Attorney Mark Berch wrote to the respondent, Tabachnick's first attorney regarding the items that she removed from the Estate of David Miller attached (APP. p.4), however, it was to no avail she did not return anything.

The petitioner was appointed administrator to the estate.

The respondent, Tabachnick after awhile filed a frivolous action for her to be a co-administrator.

The Attlebrough Court denied her petition to be co-administrator.

The respondent, Tabachnick engaged another attorney Rocco Senesse and filed another petition to appoint her as administrator and remove the administrator petitioner, Fred Davis.

The Court removed the administrator, Davis and said that the property was to be sold.

The petitioner Gertrude Davis Gorod obtained an offer for the property which was near the assessed valued of the property, therefore, petitioners went into Court to get the Court's permission to sell the property without hearing the selling price, respondent Tabachnick had attorneys Mr. Stewart III, Mr. Derby, and Joseph S. Provanzano also the Court did not hear the selling price which was $97,200.00 the Court would not allow the sale. (Now there is another action filed in the Bristol County Court by Joseph S. Provanzano to sell the property for $40,000.00).

Because of these frivolous actions the petitioner, Gertrude Davis Gorod has spend her life savings to defend these actions and is now compelled to act pro se.

Mr. Provanzano with malice has slandered, harassed, abused, embarrassed, the petitioners causing damage to their character, reputation causing them both physical and emotional distress.

Mr. Provanzano has made falsehoods to the court violating the Canon Rules and the Mass. attorney's oath with the actual intent to deceive the Court and obstruct justice.

May 7, 1996, the petitioner's appeared before Judge La Staiti, during the hearing objections were taken by the petitioners. Petitioners also informed her that they were going to appeal her decisions.

May 30, 1996, the petitions aggrieved by the Court's decisions pursuant to Massachusetts Rules of Appellate Procedure Rule 3 "Notice of Appeal" petitioners appeared in the Bristol County & Family Court in Taunton, Massachusetts to file their Notices of Appeals attached (APP. P.1) and attached (App. P. 2) along with Cassette Copy Request attached (App. P.3).

The clerk would not accept the petitioners' Notices of Appeals and would not accept their Cassette Copy Request.

The clerk would not give them a Docket Entry Sheet, stating that they do not have any Docket Entry Sheets.

The petitioners questioned the clerk why their appeals were not being taken and why they could not obtain a Cassette Copy Request, the clerk said that Judge LaStaiti said, "this court will not let you file any appeals, no pleading of any type, moreover, you are banned from filing any other action in this Court".

Petitioners went to the Register Robert E. Peck's office to find out what was going on in that Court and to inform him that the petitioners' Constitutional Rights were being deprived, however, it was to no avail. He would not speak to the petitioners.

Petitioner, Gertrude Davis Gorod was leaving Register Robert E. Peck's office when his secretary Eleanor Alexio got up from her desk and grabbed the petitioner by the arm, causing her severe bodily harm.

Petitioners left the Court and went to the Post Office and mailed their Notices of Appeal and Cassette Copy Request to the attention of Robert E. Peck, Register, however, all these documents were returned to the petitioners.

Petitioner Gorod contacted Chief Justice Liacos and informed him of the Bristol County & Family Court's refusal to accept her Notice of Appeal, Cassette Request and the assault and battery inflicted upon her by Ms. Alexio.

Chief Justice informed the petitioner Gorod, that she was to write to Chief Justice John J. Irwin, Jr. who has jurisdiction in this matter.

Petitioner Gorod, wrote to Chief Justice John J. Irwin, Jr: attached (APP. P.6), however, it was to no avail as Chief Justice Irwin, Jr. did not respond to the petitioner's letter.

Petitioner Davis contacted Chief Justice Herbert Wilkins who informed him to put the issues in writing.

Petitioner, Davis wrote to Chief Justice Herbert Wilkins attached (APP. P. 10), however, the record was not forward to the Appeals Court and there was no response from him.

Petitioners file a Zatsky petition which was denied.

Petitioners file a petition in Massachusetts

Supreme Court denied without hearing.

Petitioners filed petition in the Massachusetts Supreme Judicial Court there was oral argument during the oral argument Respondent, Tabachnick's attorney Joseph S. Provanzano told falsehoods to the Court. Mr. Provanzano said, "they are pro se with a battery of attorneys behind them" and he said that Edith Tabachnick went into the house with a police officer to get some clothes and she showed what she took in a bag to the police officer when she left, these statements are completely falsehoods **see, letter to David T.Gay attached (App. P.4).**

Latter, Joseph S. Provanzano informs the Court that there is a picture that no one wants. This statement is also a lie this picture is wanted by the Estate of David Miller.

David Miller was offered for this picture and frame $6,000.00 and he would not sell this picture and frame.

Joseph S. Provanzano not only told falsehoods in the Massachusetts Supreme Judicial Court he has lied in every court through the judicial process.

After hearing oral arguments the Massachusetts Supreme Judicial Court's decision was Judgment affirmed.

Petitioners upon reading the Court's decision found that it erred in its decision based on the facts and evidence.

Now the issues are before this Honorable Court.

ARGUMENT

REASONS FOR GRANTING THE PETITION

I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS FROM BEING DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS AS SET FORTH IN THE UNITED STATES CONSTITUTION

May 30, 1996, Petitioners appeared in the Taunton & Family Court to file their timely Notices of appeal and cassette copy request attached (APP. P.1, P.2, and P.3).

The clerk refused to accept petitioners Notices of Appeals and Cassette Copy Request.

Petitions were deprived of their Constitutional Rights of due process and equal protection of the law.

The United States Constitution Amendment V: states in pertinent part: "cannot be deprived of life, liberty, or property, without due process of law".

The United States Constitution Amendment XIV: "All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

II. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS CIVIL RIGHTS AS THEY WERE DISCRIMINATED AGAINST BECAUSE OF THEIR AGE AND RELIGION

All individuals filing appeals in the Taunton Probate & Family Court are accepted by the clerks.

These individuals are younger than the petitioners and are of a different religion than the petitioners.

Petitioners were discriminated against because of their age and religion when Judge La Staiti had them appear in court at 9:00 A.M. and would not hear the case until Joseph S. Provanzano arrived.

Joseph S. Provanzano is younger than the petitioners and not of the same religion as the petitioners.

Mr. Provanzano did not arrive in court until 11:30 A.M.

No judge would allow an action to be delayed for two and half hours without ordering a default in the action.

On another occasion Judge La Staiti discriminated against the petitioners when she had them appear in court at 9:00 A.M. and approximately at 11:00 A.M. she sent the petitioners downstairs and did not hear the case.

No other persons in the courtroom had to wait two hours and then sent downstairs to again wait for nothing.

The other persons in the Courtroom were younger than the petitioners

III. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS FROM BEING DEPRIVED OF THEIR CONSTITUTIONAL RIGHTS AS SET FORTH IN MASSACHUSETTS CIVIL RIGHTS ACT, M.G.L. CHAPTER 12 SECTION 111

Massachusetts Civil Rights Act, M.G.L. Chapter 12 § 111 "protects citizens from being deprived of their United States Constitutional Rights by indivduals and allows the filing Civil Action against these parties.

Petitioner, Gorod argues that the respondent, Edith Tabachnick's attorney Joseph S. Provanzano made threats to the petitioner denying her Constitutional Rights to due process of law and equal protection of the law by acting jointly with a state actor(Judge La Staiti) in not allowing the record to be assembled and forward to the Appeals Court, therefore, this action is appropriate Edmondson v. Leesville Concrete Co. 500 U.S. 614 (1991).

IV. CERTIORARI SHOULD BE GRANTED TO PROTECT PETITIONERS' FROM BEING DEPRIVED OF THEIR RIGHT IN OBTAINING JUSTICE AS SET FORTH IN MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE XI

Massachusetts Declaration of Rights Article XI: remedy by recourse of the laws; obtaining of right and justice, completely promptly, "Every subject of the commonwealth ought to find a certain remedy, by have recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to

obtain right and justice freely, and without being obliged to purchase it: Completely, and without denial: promptly, and without delay..."

The petitioners had the right to obtain justice promptly and without delay, however, this was not the case. The petitioners were deprived of their rights as set forth in the Massachusetts Declaration of Rights Article XI, when the were deprived of filing Notices of Appeal and Cassette Copy Request and did not receive justice.

V. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PETITIONERS' RIGHT TO APPEAL AS SET FORTH IN MASSACHUSETTS RULES OF CIVIL APPELLATE PROCEDURE RULE 3 (a)

Massachusetts Rules of Civil Procedure Rule (a) states in pertinent Part: "Filing the Notice of Appeal. An appeal permitted by law from the lower court shall be taken by filing a notice of appeal with the Clerk in the lower court...."

May 30, 1996, the petitioner Fred Davis appeared in the Bristol County Probate Court to file his Notice of Appeal attached (APP. P.1) also on this date the petitioner Gertrude Davis Gorod appeared in the Bristol County Probate & Family Court to file her Notice of Appeal attached (APP. P.2), both petitioners filed Cassette Copy Requests attached (APP. P.3). Inaddition petitioners requested a Docket Entry Sheet.

The clerk refused to accept their Notices

of Appeals, Cassette Copy Rquests and informed the petitioners that they do not have Docket Entry Sheets.

The clerk said the Judge Elizabeth O'Neill La Stait said, "the court would not let them file any appeals, no pleadings o any type, moreover, both are banned from filing any other action in this court.

The petitioners' did not file this action in this Court. This frivolous action was filed by attorneys for Edith Tabachnick, **who is not a legal heir to the Estate of David Miller.**

The petitioners were deprived of their right to appeal the Court's decision.

Petitioner, Gorod Contacted Chief Justice Liacos for his help in getting their Notices of Appeals, Cassette Copy Request filed in the Bristol County Probate & Family Court along with a Docket Entry Sheet.

Chief Justice Liacos informed the petitioner to write to Chief Justice John J. Irwin, Jr. which the petitioner did attached (APP. P.6) there was no response from Chief Justice Irwin.

Petitioner,Fred Davis contacted Chief Justice Herbert Wilkins who informed him to put the issues in writing.

Petitioner, Davis wrote to Chief Justice Herbert Wilkins attached (APP. P. 10) however, there was no response from him and the record was not assembled and petitioners' were deprived of both their United States Constitutional Rights and Massachusetts Constitutional Rights along with

other statutes as previously addressed.

VI. CERTIORARI SHOULD BE GRANTED TO ENFORCE CRIMES AGAINST THE ELDERLY MASSACHUSETTS GENERAL LAWS CHAPTER 19A §14 "FINANCIAL EXPLOITATION"

Massachusetts General Laws Chapter 19A § 14 "Financial Exploitation: "an act or omission by another person, which causes a substantial monetary or property loss to an elderly which gain would otherwise benefit the elderly" is subject to fines and a prison term.

The petitioners are elderly persons and are victims of "Financial Exploitation" by the respondent Edith Tabachnick.

Tabacknick took $250,000.00, in items belonging to the petitioner, Gorod and removed other items from the estate in the amount of over a million dollars she was told by the Administrator of the Estate to return the items forthwith, however, she would not return them instead she removed the items over state lines.

Attorney Mark Berch wrote to the respondent, Tabachnick's first attorney regarding the items that she removed from the Estate of David Miller attached (APP. P. 4, however, it was to no avail she did not return anthing.

The Court erred in law when it did not enforce the foregoing statute.

VII. CERTIORARI SHOULD BE GRANTED BECAUSE ATTORNEY JOSEPH S. PROVANZANO ACTED IN BAD FAITH

Massachusetts Canon Rules: Canon Rule 1 Disciplinary Rules DRI-102 Misconduct: (A) a lawyer shall not: (4) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation . (5) Engage in conduct that is prejudical to the administration of justice.

Massachusetts General Laws 221 section 38 Attorney's Oath: "You (Name) solemnly swear that you will do no falsehood, nor consent to the doing of any in Court." "So help you GOD".

Mr. Provanzano went before the Massachusetts Supreme Judicial Court and told the following falsehoods: "they are pro se with a battery of attorneys behind them. and Edith Tabachnick went into the house to get some clothes and she showed the bag of clothes that she took to the officer when she left, and she took a picture that no one wants.

The administrator told her to return all the items that she took forthwith, however, she did not return the items.

Attorney Berch wrote to her first attorney regarding these items attached (APP. P. 4) she did not return the items.

Mr. Provanzano not only told falsehoods in the Massachusetts Supreme Judicial Court he has lied in every court during this legal process.

He has slandered, harassed, abused, embrassed the petitioners causing damage to their charact-

er causing them physical and emotional distress.

Joseph S. Provanzano is using the Courts to harass the petitioners, now he has filed another frivolous action in the Bristol County Probate Court.

Again, the petitioners want to file an Appeal on that frivolous action and again the Bristol County Probate will not take their appeals.

Petitioners filed a Motion for Change of Venue on that action, Mr. Provanzano opposed that motion which is very strange since a change of venue would be more convenient for him to travel to Cambridge since he resides in Lynnfield and has his office in Peabody, therefore, the facts indicate that there is a conspiracy between Judge La Staiti and Joseph Provanzano to hurt and harm the petitioners depriving them of their inheritance.

Mr. Provanzano has violated the Massachusetts Canon Rules, violated the Attorney's Oath and is continuing to act in bad faith with the actual intent to mislead and deceive the Court. **SEE** Groh v. Viglet 34 Ohio Law R132 "an act done with actual intent to mislead or deceive another is an act in bad faith". **SEE** Hjlgenberg v. Northrup 33 N.E. 786,787, 134 Ind 92 "Bad faith and fraud are synonymous".

Mr. Provanzano because of misconduct should be banned from practicing law throughout the United States of America.

VIII. CERTIORARI SHOULD BE GRANTED BECAUSE JUDGE LA STAITI ABUSED HER POWER WHICH RESULTED IN THE PETITIONERS DEPRIVED OF THEIR RIGHTS

The Judge abused her power when she deprived the petitioners their Constitutional Rights when she would not let them appeal her decisions.

She deprived them of their rights as set forth in the Massachusetts Declaration of Rights XI when she would not let them appeal her decisions.

She discriminated against the petitioners because of their age and religion.

She allowed plaintiffs/defendants younger than the petitioners to appeal her decisions.

Massachusetts Rules of Civil Procedure Rule 26 (a) "Parties may obtain discovery by one or more of the following methods: (b), depositions upon oral examinations....: written interrogatories....."

She would not let the petitioners' attorneys take the respondent's deposition and she would not let the petitioners attorneys obtain complete interrogatories.

Motions to Compel to Take the Deposition of Edith Tabachnick and Compel the answering of interrogatories were filed by the petitioners' attorneys (she did not rule on any of these Motions).

She deprived the petitioners there right to discovery pursuant to Massachusetts Rules of Civil Procedure Rule 26 (a).

Respondent Tabachnick refused to have her deposition taken and did not apply for a protective order. **SEE,** East Boston Ecumenical Coummunity, et al v. Mastrorillo 133 F.R,D. 2 (1990) a party may not unilaterally decide not to attend a duly noticed deposition without at least first applying for a protective order.

The petitioners attorney filed Motions Compelling Tabachnick interrogatiories that were not answered. **SEE,** Grant v. Clairol, Inc., 113 F. R. D. 574 (E.D.Penn. 1986) the plaintiff's action was dismissed on grounds that the plaintiff refused to answer interrogatories.

The petitioners' attorneys filed Motions To Dismiss on these motions when the attorney asked her why she would not rule on these motions, she was arrogant, bias, and prejudice and said, "I can do what I want to do".

Dismissal of an action is appropriate when plaintiff willfully failed to appear for a deposition and willfully failed to answer interrogatiories: Manning v. Manning 136 Colo 380, 317, P2d 329(1957), Evans v. Schlein Mun Ct App Dist col 51 A2d 472 (1946), Turner v. Anderson 376 So 2d 899 (1979), Estate of Atwood 240 NE2d 451 (1968), Bergin v. Ashford 264 NE2d 266 (1970), White v. Henrotin Hospital Corp. 398 NE 2d 24, Valdivia v. Chicago & North Western Transp. Co. 409 NE2d 457 (1980). Suckow v. Boone State Bank & Trust, Co.314 NW 2d 421 (1982), Field v. St-AUFFER Publications, Inc.578 P2d 1138 (1978), Allan v. Smith 390 So 2d 1300 (1980),Azarian v.

Ettiger 435 NE2d 638 (1982), McArthur Patton Christian Assoc. v. Farm Bureau Insurance Group 270 NW 2d 101 (1978), Brez v. Schmitz 248 NW 2d 921 (1976), Venker v. Hyler 353 SW2d 590 (1961), Roberson v. Kilborn 40 Nev 423, 165 P220 (1917), Kalosha v. Novick 426 P2d 598 (1967), DuBois v. Iovinella 222 NYs 2d 460.

Now again, Joseph S. Provanzano has filed another frivolous action, and she is doing the same thing, petitioners Notices of Appeals are not being accepted and record is not being forward to the Appeals Court, Tabachnick refuses to have her deposition taken, Judge La Staiti refuses to Dismiss the action.

Because of her prejudices against the petitioners and because of the hardship for senior citizens to travel approximately 135 miles round trip to New Bedford, petitioners filed a Motion For Change of Venue, however, it was denied.

The petitioners suffered a severe miscarriage of justice and it appears that they will be going over the same thing again by the hands of Judge La Staiti.

Massachusetts General Laws Chapter 19A § 14 "Financial Exploitation "Act or omission by another person, which causes a substantial monetary or property loss to an elderly person, which gain would otherwise benefit the elderly person"

The petitioners are elderly persons and are victims of "Financial Exploitation" by the respondent Edith Tabachnick who removed items from the Estate of David Miller, which was their

inheritance.

Judge La Staiti did not go into that issue she just let the respondent get away with stealing the petitioners inheritance.

She removed the administrator, Fred Davis leaving the estate without an administrator and tax bills and water bills are not being paid and the Town of Raynham is threating on forecloseing on the real estate.

IX. CERTIORARI SHOULD BE GRANTED BECAUSE THE MASSACHUSETTS SUPREME JUDICIAL COURT ERRED IN ITS DECISION BASED ON THE FACTS, EVIDENCE AND ORAL ARGUMENT

The Massachusetts Supreme Judicial Court erred in its decision because the respondent, Edith Tabachnick is not a legal heir to the Estate of David Miller. She is a member of a religious cult.

This issue was not disputed by the respondent.

The Massachusetts Supreme Judicial Court's decision is invalid as it does not bear any signature of a judge/justices or clerk. Moreover, it does not bear an official legal seal.

The petitioners' appendix submitted to the Massachusetts Supreme Judicial Court contained Notice of Appeal (Fred Davis) Notice of Appeal (Gertrude Davis Gorod) and Petitioners' Cassette Copy Request Form.

Bristol County Probate & Family Court did not deny the fact that they did not accept the

petitioners' Notices of Appeals and Cassette Copy Request Form and returned them to the petitioners attached (App. Pages 1,2,3).

Bristol County & Family Court does not deny the fact that they would not furnish the petitioners docket entry sheets.

Bristol County & Family Court did not deny the fact that petitioners went to the Register, Robert E. Peck's Office to have their Notices of Appeals and Cassette Request Form taken and Mr. Peck would not speak to them. The court did not deny that when petitioner, Gertrude Davis Gorod was leaving Register Robert E. Peck's Office his secretary Eleanor Alexio got up from her desk and grabbed the petitioner by the arm, causing her severe bodily harm.

The Massachusetts Supreme Judicial Court erred when it based its decision on the issue that the petitioners could have gone to the chief justice.

Petitioners did go to the Chief Justice.

October 4, 1996, the petitioner contacted Chief Justice Liacos, who informed Gorod that Chief Justice John J. Irwin, Jr. has jurisdiction in this matter.

Gorod wrote to Chief Justice John J. Irwin, Jr. attached (APP.P.6) there was no response from him.

Petitioner, Davis contacted Chief Justice Herbert Wilkins who informed him to put the issues

in writing.

Petitioner, Davis wrote to Chief Justice Herbert Wilkins attached (App. P. 10), however, there was no response from him and the record was not assembled and petitioners were denied their Constitutional Rights of due process of law and equal protection of the law along with other statutes.

The petitioners exhausted all remedies for relief.

Again, the respondent's attorney has filed another frivolous action pertaining to the same issues that are on appeal and again the Bristol Court and Family Court and the same Judge La-Staiti will not accept the petitioners' appeals petitioners have contacted the Chief Justice and again there is no response.

Massachusetts Commission on Judicial Code (for Judges) clearly states judge's decisions can be appealed.

SEE Haines v. Kerner 404 U.S. 519 (1972) the court should be lenient with pro se.

X. THE PUBLIC INTEREST IS INVOLVED

The Public interest is involved, as the Massachusetts inferior Courts are completely out of control with special emphasis on the Bristol County & Family Court.

The public in Massachusetts are being deprived of their rights as set forth in both the United States and Massachusetts Constitutions

along with other statutes.

CONCLUSION

WHEREFORE, Petitioners, Fred Davis and Gertrude Davis Gorod, respectfully pray that a Writ of Certiorari issue to review the decision of the Massachusetts Supreme Judicial Court and correct the miscarriage of justice inflicted upon the petitioners.

Respectfully submitted,

Gertrude Davis Gorod

Fred Davis
353 Bryant Street
Malden, Ma 02148
(781 322-8223)

Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

APPENDIX

APP. 1

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss. PROBATE & FAMILY
NO. 89-1790-AI

ESTATE OF DAVID Miller

NOTICE OF APPEAL

Now comes Fred Davis, heir to the Estate of David Miller and appeals court's decisions that were presented to the court on May 7, 1996, along with other motions that were not ruled on by Judge Elizabeth O'Neill La Staiti on the same date.

By,
s/ Fred Davis
Fred Davis, Heir to
the Estate of David
Miller
353 Brysnt Street
Malden, Ma 02148

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of the foregoing Notice of Appeal to: Joseph S. Provanzano 16 Bourbon Street Peabody, Ma 01960.

Date 5-30-96 s/Fred Davis

APP. 2

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss. PROBATE & FAMILY
NO. 89-1790-AI

ESTATE OF DAVID MILLER

NOTICE OF APPEAL

Now comes Gertrude Davis Gorod, heir to the Estate of David Miller and appeals the court's decisions that were argued before the court on May 7, 1996, before Judge Elizabeth O'Neill La-Staiti.

By,
s/Gertrude Davis
Gorod, Heir to
the Estate of
David Miller
371 Bryant Street
Malden, Ma 02148

CERTIFICATE OF SERVICE

I hereby certity that I mailed a true copy of the foregoing Notice of Appeal to: Joseph S. Provanzano 16 Bourbon Street Peabody, Ma 01960.

Date 5-30-96 s/Gertrude Davis
Gorod

APP. 3

COMMONWEALTH OF MASSACHUSETTS

PROBATE AND FAMILY COURT DEPARTMENT
CASSETTE COPY REQUEST FORM

Bristol Division Estate of David Miller Case No. 89-1790-AI

PERSONS REQUESTING COPIES

Gertrude Davis Gorod
Fred Davis
353 Bryant Street
Malden, Ma 02148
(617) 322-8223

Judge Presiding	Date Recorded
Elizabeth O'Neill La Staiti	May 7, 1996

S/ Gertrude Davis Gorod
S/ Fred Davis
353 Bryant Street
Malden, Ma 02148

APP. 4

Mark F. Berch
Attorney at Law
45 Braintree Hill Office Park
Suite 201
Braintree, Ma 02184
(617) 843-6443

March 26, 1990

David T. Gay, Esq.
Gay and Gay
73 Washington St.
Taunton, Ma 02780

In re: Estate of David Miller

Dear Mr. Gay:

With regard to the above matter I am requesting that your client Edith Tabachnick provide my office with the keys to the real estate in Raynham and the keys,title,and registration to the motor vehicle.

Additionally for the items that Ms. Tabachick has stated that she removed from the property after Mr. Miller's death, I require a full accounting and itemization of everything.

I would like to know the complete name and address of all persons who accompanied your client into the house when these items were removed. At this time I am attempting to collect the estate's property and the cooperation of your client is essential for me to achieve this purpose.

Kindly contact my office at your earliest

convenience to further discuss this matter.

Very truly yours,
S/ Mark F. Berch

October 4, 1996

Chief Justice John J. Irwin, Jr.
Administrative Office of the Trial Court
Two Center Plaza - Room 540
Boston, Massachusetts 02108

Dear Honorable Chief Justice Irwin, Jr.

May 30, 1996, Eleanor Alexio committed an act of assault and battery upon me causing me severe pain and suffering.

Ms. Alexio is employed by the Commonwealth as a secretary to Robert E. Peck, Register of the Probate and Family Court Department, Bristol County Division located at 11 Court Street Taunton, Massachusetts.

As a result of the assault and battery I have been unable to have full use of my arm since May 30, 1996.

In addition my Constitutional Rights Amendments V and XIV have been denied by Judge Elizabeth O'Neill LaStaiti.

I was denied due process of law and equal protection of the law.

I engaged an attorney to represent me at the beginning in the action of the Estate of David Miller Case No. 89-1790 A1, after spending thousands of dollars in legal fees I could not obtain any discovery from the plaintiff, Edith Tabachnick.

My attorney filed Motions to Compel the taking of Edith Tabachnick's deposition and Compel Answers to Interrogatories and Motion to

Dismiss.

Judge La Staiti would not rule on these Motions, when my attorney asked her why she would not rule on these motions, she was arrogant and said, " I can do what I want to do".

Edith Tabachnick refused to have her deposition taken and refused to answer interrogatories and Judge La Staiti knowingly and wilfully denied me due process of the law and equal protection of the law.

Judge La Staiti, informed my attorney that she was going to have a trial regarding the removal of the administrator and he was to prepare for trial, however, she never had a trial but merely removed the administrator leaving the estate without an administrator and resulting in additional legal fees for me.

Now that the administrator has been removed, tax bills and water bills are not being paid and the Town of Raynham is planing on foreclosing the the property for non-payment of taxes, which would be the fault of the Commonwealth of Massachusetts and Judge LaStaiti.

Motion was filed with the Court to sell the property, this motion was denied and I took exceptions.

I am a senior citizen and can no longer pay legal fees nor pay tax bills, therefore, I want to appeal the Court's decision for not allowing the selling of the property and removal of the administrator, however, Judge LaStaiti will not allow me to appeal her decision.

May 30, 1996, pursuant to M.R.C.P Rule 3 "Notice of Appeal shall be filed with the clerk of the lower Court", I appeared in the Bristol County Probate & Family Court to file my notice of appeal, it became a disaster zone. The clerk would not accept my Notice of Appeal, I was informed that Judge LaStaiti said, "the court would not let me file any appeals, no pleadings of any type, moreover, I was banned from filing any other action in this Court".

I went to the Register Robert E. Peck's Office to find out what was going on in that court and to inform him that I had a right to file an appeal in the lower court and that my Constitutional Rights were being denied, however, he refused to speak to me. I was leaving Mr. Peck's Office when Eleanor Alexio grabbed me by the arm causing me severe bodily harm.

I left the court and went to the Post Office and mailed my Notice of Appeal and Cassette Copy Request Form to the Attention of Robert E. Peck, Register, however, all these documents were returned to me.

I am being cheated out of an inheritance without due process of law and equal protection of the law.

Edith Tabachnick broke into the home of the late David Miller right after his funeral and took items from his estate in the amount of $250,000.00, (TWO HUNDRED AND FIFTY THOUSAND DOLLARS) and refuses to return these items to the Estate of David Miller and Judge LaStaiti would not even

go into this issue.

It is vital for me to go forward with may appeal and obtain justice along with my rightful inheritance.

Ms. Alexio is employed in the Bristol County whereby it would be a conflict of interest to bring criminal charges in that district.

I am requesting criminal charges against Ms. Alexio be brought in the Cambridge Middlesex Court forthwith.

Judge LaStaiti is to be discharged for denying my Constitutional Rights.

The record is to be assembled and forward to the Appeals Court forthwith, along with any other relief you may deem appropriate.

If this matter is not settled at this stage of events, I am informing you pursuant to M.G.L. c 258 I will file a civil action suit agaist the Commonwealth of Massachusetts, Eleanor Alexio and Judge LaSaiti and it will be my understanding that M.G.L. Chapter 258 has been fulfilled.

This matter has been reported to Chief Justice Liacos who in turn informed me that you have jurisdication in this matter.

Thank you for your cooperation in this matter.

Sincerely yours,
s/Gertrude Gorod
371 Bryant Street
Malden, Ma 92148

CERTIFIED MAIL
P 576 472 961

October 2, 1996

Chief Justice Herbert Wilkins
1300 Court House
Boston, Ma 02108

Dear Honorable Chief Justice Wilkins:

Regarding our telephone conversation on October 2, 1996, I am informing you of the abusive, slander, assault and battery and violations of our Constitutional Rights by the employees of the Massachusetts Court system experienced by members of my family and myself.

September 26, 1996, my sister (Gertrude Davis Gorod) and I appeared at the Taunton Probate & Family Court 11 Court Street Taunton, Massachusetts to file our appearance and objections to a petition regarding the Estate of David Miller case number 89-1790 A1.

The clerk took our appearances in the back of the office and made copies of these documents and gave the copies to us.

Our appearances included the case number 89-1790 A1, however, the clerk did not indicate that the case number was incorrect.

October 2, 1996, copies of our appearance were returned to us. If the number of the case was changed why were we not informed of the change when we were in court on September 26, 1996?

The return of these appearances has caused both of us an added burden and hardship.

September 16, 1996, I appeared in the Fall

River District Court located at Rock Street Fall River pertaining to Emergency Service v. Estate of David Miller.

The case was deposed of and the clerk informed us that we were to go to the Taunton Small Claims Court to obtain a check for $100.00, for the refund of the bond.

She handed us a sealed document and instructed us to present it to the clerk in the Taunton small Claims Court and you will receive the check.

The clerk at the Fall River Court placed telephone calls to the Taunton Court in order to have the check ready when we arrived in Taunton, however, all telephone lines were busy.

Ms. Davis presented the sealed document to the clerk who identified herself as "Terry". Ms. Davis told her that she was here to pick up a check for $100.00. Terry said, "sit down and shut up".

Ms. Davis asked her where was Mr. Peck's Office. Her reply was he's not in today he's at a funeral.

Ms. Davis went downstairs to his office and she was followed downstairs by a women who was at the entrance of the court where the security station is, this woman would not reveal her name.

The woman left the court entrance unattended leaving the court at the mercy of anyone also jeopardizing the safety of Ms. Davis.

This woman during her following Ms. Davis said that Mr. Peck was out to lunch. Based on the facts someone is lying leaving one to be-

lieve that Mr. Peck is an absentee employee.

A man came out from the office next to Mr. Peck's office and Ms. Davis infromed him of the events and that she was here to obtain a check, he merely replied I don't know what you are talking about and went back into his office.

I never received the check for $100.00, which I am entitled to this refund.

May 30, 1996, Eleanor Alexio committed an act of assault and battery upon my sister Mrs. Gertrude Davis Gorod.

Ms. Alexio is employed by the Commonwealth of Massachusetts as a secretary to Robert E. Peck, Register of the Probate and Family Court Department, Bristol County Division located at 11 Court Street Taunton.

As a result of the assault and battery Ms. Gorod has been unable to have full use of her arm since May 30, 1996.

In addition, our Constitutional Right Amendment V and XIV have been denied by Judge Elizabeth O'Neill LaStaiti.

We were denied due process of law and equal protection of the law.

We engaged attorneys to represent us at the beginning in the action of the Estate of David Miller Case No. 89-1790 A1, after spending thousands of dollars in legal fees we could not obtain any discovery from the plaintiff, Edith Tabachnick.

Our attorneys filed Motion To Compel the taking of Edith Tabachnick's deposition and compel answers to interrogatories and Motions to Dismiss.

Judge LaStaiti would not rule on these motions, when Ms. Gorod's Attorney asked her why she would not rule on these motions, she was arrogant and said, "I can do what I want to do".

Edith Tabachnick refused to have her deposition taken and refused to answer interrogatories and Judge LaStaiti knowingly and wilfully denied us due process of the law and equal protection of the law.

Judge LaStaiti, informed our attorneys that she was going to have a trial, therefore, they were to prepare for trial, however, she never had a trial resulting in additional legal fees stating "I can do what I want to do".

Now that the administrator has been removed, tax bills are not being paid and the Town of Raynham is planing on foreclosing on the property for non-payment of taxes, which would be both the fault of the Commonwealth of Massachusetts and Judge La Staiti because she will not allow us to appeal her decision.

We are senior citizens and can no longer pay legal fees nor pay tax bills, therefore, we want to appeal the court's decision for not allowing the selling of the property and the removal of the administrator, however, Judge La Staiti will not allow us to appeal her decision.

May 30, 1996, pursuant to M.R.C.P Rule "Notice of Appeal shall be filed with the clerk of the lower court". We appeared in the Bristol

County Probate & Family Court to file our notices of Appeal. We were informed that Judge LaStaiti said "the court would not let us file any appeals, no pleadings of any type, moreover, we were banned from filing any other action in this court".

We went to the Register, Robert E. Peck's Office to find out what was going on in that court and to inform him that we had a right to file an appeal in the lower court and that our Constitutional Rights were being denied, however, he refused to speak to us. We were leaving Mr. Peck's Office when Eleanor Alexio grabbed Ms. Gorod by the arm causing her severe bodily harm.

We left the court and went to the Post Office and mailed our Notices of Appeal and Cassette Copy Request Form to the attention of Robert E. Peck, Register, however, all these documents were returned to us.

We are being cheated out of our inheritance without due process of law and equal protection of the law.

Edith Tabachnick broke into the home of the late David Miller right after his funeral and took items from his estate in the amount of $250,000.00 and refused to return these items to the Estate of David Miller and Judge LaStaiti would not even go into this issue.

Therefore, it is vital for us to go forward with our appeal and obtain justice along with our rightful inheritance.

Joseph S. Provanzano of the law firm Provanzano & Associates located at 16 Bourbon Street,

Suite C Peabody, Massachusetts 01960-1338 who is an officer of the court lied before Judge LaStaiti accused me of stealing money, Judge LaStaiti did nothing to him for lying and obstructing justice as Judge LaStaiti was furnished records that I paid tax bills, and funeral expenses and other expenses out of my own money in the amount of over $20,000.00, these records were furnished by attorney Berch who is the attorney of the Estate.

Joseph S. Provanzano accused my sister of having all kinds of property, this statement is also a lie, the fact of the matter is that my sister does not own any property at all.

I was informed that when a judge is aware that an attorney is lying and obstructing justice, violating the Canon Rules the judge is to take appropriate action, however, this is not the case with Judge LaStaiti as a matter of fact she is condoning Mr. Provanzano's misconduct.

Ms. Alexio is employed in the Bristol County Court System, therefore, it would be a conflict of interest to bring criminal charges in that district.

My sister is requesting criminal charges against Ms. Alexio be brought in the Cambridge Middlesex District Court.

Based on the facts and evidence and for the sake of justice Judge LaStaiti must be removed from any further connection with the Estate of David Miller.

The record is to be assembled and forwarded to the Appeals Court, along with any other re-

lief you may deem appropriate.

Thanking you inadvance,

Sincerely yours,
s/Fred Davis
353 Bryant Street
Malden, Ma 02148

CERTIFIED MAIL:
P 576 473 071

APP. 17

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

CIVIL ACTION NO.
96-J-404

Without hearing the within is denied, Ireland, J.

11 June 1996

(WITHIN)

DEFENDANTS -APPELLANTS ZATSKY PETITION

Now comes both defendants-appellants Fred Davis and Gertrude Davis Gorod in the above-cited action and moves the Appeals Court to have the Bristol County Probate Family Court accept their appeals, assemble the records and forward them to the Appeals Court for review of the lower court's decisions on several issues.

The lower court has violated the defendants appellants United States Constitutional Rights as set forth in amendments V and XIV of the United States Constitution.

The lower court has also violated the defendants-appellants rights under the Constitution of Massachusetts

Davis' and Gorod's State and Federal Constitutional Rights were violated when they were refused by the court to accept their Notice of Appeal and their request for the transcript was also denied by the lower court.

Therefore, Davis and Gorod requests the Appeals Court to allow their Zatsky Petition.

Finally in Haines v. Kerner 404 U.S. 519, "The court should be lenient since the appellants are pro se.

Based on the foregoing facts and evidence the appellants request the Appeals Court to allow their Zatsky Petitions in order that they go forward with their appeals and obtain justice.

Appellants also request that the Appeals Court grant any other relief that this court deems appropriate.

RESPECTFULLY SUBMITTED BY
s/Fred Davis
353 Bryant Street
Malden, Ma 02148
(617) 322-8223

s/Gertrude Davis Gorod
371 Bryant Street
Malden, Ma 02148

CERTIFICATE OF SERVICE

We hereby certify that we mailed a true copy of foregoing Zatsky Petition to: Joseph S. Provanzano 16 Bourbon Street Peabody, Ma 01960 postage prepaid.

Date 6-6-96

s/ Fred Davis
s/Gertrude Davis Gorod

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-96-0395

FRED DAVIS, GERTRUDE DAVIS GOROD, AND THE ESTATE OF DAVID MILLER

vs.

EDITH TABACHNICK, BRISTOL COUNTY PROBATE COURT, AND THE APPEALS COURT

JUDGMENT

This matter came before the Court, Greaney, J., presiding, on a petition pursuant to G.L. c. 211, s. 3, and upon consideration thereof, it is ORDERED that the petition be, and the same hereby is, denied without hearing.

By the Court (Greaney, J.),
s/ Maura S. Doyle, Clerk

Entered: October 23, 1996

SJC-07313

FRED DAVIS & OTHERS 1/ vs. EDITH TABACHNICK & OTHERS 2

July 3, 1997

Practice, Civil, Appeal, Record. Supreme Judicial Court, Superintendence of inferior courts.

A single justice of this court denied, without hearing, a pro se petition for relief under G. L. c. 211 § 3. The petitioners' brief contains no citations to support their factual allegations, as required by Mass. R.A.P. 16 (a) (3), 365 Mass. 860 (1974), and Mass. R.A. P. 16 (e), as amended, 378 Mass. 940 (1979) and their allegations of error by the Bristol Division of the Probate and Family Court are not supported by the record appendix submitted to this court. Moreover, their appendix does not contain a transcript or tape recording of the Probate Court Court proceedings; the relevant Probate Court docket entries: or any pertinent pleadins, motions, judgment, order, or decicison of the Probate Court (other than the unsubstantiated summaries asserted in the plaintiffs' brief) that is at issue. Although the plaintiffs have been acting pro se, they are held to the same standards as litigants who are represented by counsel. See Solimine v. Davidian 422 Mass 1002 (1996): Brossard v. West Roxbury Div. of the Dist. Court Dep't, 417 Mass 183, 184 (1994). Accordingly, we shall not address the merits of the plaintiffs' claims be-

cause there is nothing in the record before us that indicates that those claims were adequately raised and preserved in the Probate Court proceedings. E.H.S. v. K.E.S.,424 Mass. 1011, 1011-1012 (1997).

Furthermore, the single justice correctly denied the petition because the plaintiffs have or had adequate and effective avenues other than G.L.c.211, § 3, by which to seek and obtain the requested relief. See Martineau v. Department of Correction, 423 Mass. 1007 (1996): Adams v. Cumberland Farms Inc.,420 Mass. 807 (1995). The plaintiffs could have filed a motion in the Probate court to compel the register of that Court to accept for filing their notice of appeal and to process that appeal. See Morales v. Commonwealth 424 Mass. 1010 (1997); Callahan v. Commonwealth 416 1010 (1994); Burnham v. Clerk of the First Dist. Court of Essex, 352 Mass. 466, 467-468 (1967). In these cases, we have stated that a clerk should not refuse to docket a notice of appeal unless ordered to refuse by a judge. Logic dictates that such orders should be in writing. We have also determined that under Rule 201 (3) of the Supplemental Rules of Probate Court "parties aggrieved by a denial of a request for a recording or a delay in the processing may refer the matter to the Chief Justice of the Probate and Family Court. "Greco v. Suffolk Div. of the probate & Family Court Dep't, 418 Mass. 153, 156 , (1994). Nevertheless, the plaintiffs' claim that the judge ordered the register not to accept a notice of an

appeal or any other pleading is not supported by proof in the record and cannot be considered by this court. The single justice correctly denied the petition, without a hearing, for relief under G.L.C. 211, § 3.

Judgment Affirmed

Fred Davis & Gertrude Davis, pro se
Joseph S. Provanzano (Paul M. Derby with him) for Edith Tabachnick.

1 Gertrude Davis Gorod and the Estate of David Miller.

2 The Appeals Court and the Bristol Division of the Probate and Family Court Department.

(2)

Supreme Court, U.S.
FILED
OCT 28 1997
CLERK

97-518
NO.

In The
Supreme Court of the United States
October Term, 1997

ESTATE OF DAVID MILLER
FRED DAVIS
GERTRUDE DAVIS GOROD

Petitioners,

v.

EDITH TABACHNICK
APPEALS COURT
BRISTOL COUNTY PROBATE COURT

Respondents.

On Petition for Writ of Certiorari
To the Massachusetts Supreme Judicial Court

RESPONDENT EDITH TABACHNICK'S BRIEF IN OPPOSITION

Joseph S. Provanzano, Esq,
Counsel of Record
16 Bourbon Street
Peabody, MA 01960
(978) 535-8222

October 21, 1997

NO.

In The
Supreme Court of the United States
October Term, 1997

ESTATE OF DAVID MILLER
FRED DAVIS
GERTRUDE DAVIS GOROD

Petitioners,

v.

EDITH TABACHNICK
APPEALS COURT
BRISTOL COUNTY PROBATE COURT

Respondents.

On Petition For Writ of Certiorari To the Massachusetts Supreme Judicial Court

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RESPONDENT EDITH TABACHNICK'S BRIEF IN OPPOSITION

Joseph S. Provanzano, Esq.
Counsel of Record
16 Bourbon Street
Peabody, MA 01960
(978) 535-8222

October 21, 1997

QUESTIONS PRESENTED

Respondent respectfully disagree with Petitioners' statement of the question presented. In Respondents' view, the actual questions presented in this case are the following:

(1) Does the Massachusetts State Supreme Court's decision present any compelling reason to warrant a writ of certiorari?

(2) Do independent and adequate state grounds support the judgment of the Massachusetts Supreme Judicial Court?

(3) Does the Respondent present any valid jurisdictional grounds for this Petition to be properly before this Court?

STATEMENT OF THE CASE

Respondent adopts by reference the statement of the case presented by the Supreme Judicial Court of Massachusetts. Petition App. A 1. Respondent specifically disagrees with the vast majority of Petitioners' statement, and therefore will lay out as briefly as possible Respondent's statement of the case.

The Petitioners' and the Respondent, Edith Tabachnick's, uncle David Miller died intestate in September of 1989 leaving a brother, John Miller, who has since died, Gertrude Davis Gorod (niece) and Fred Davis (nephew) (hereafter "Petitioners"), and Edith Tabachnick (niece) (hereafter "Respondent") as the

only remaining heirs to his estate. Contrary to Petitioner's assertion otherwise, Respondent is in fact a legal heir to the estate of David Miller.

On or about March of 1990, Petitioner Davis applied for and was allowed at pre-trial conference, to be administrator of that estate in the Bristol County Probate Court in Massachusetts. Mr. Davis listed the items of the estate to be a 1977 Plymouth Volare (Est. $ 750.00) and approximately $ 8,500.00 in a savings account at the Shawmut Bank. In addition the estate contained two parcels of land in Raynham, Massachusetts at 1667 Broadway and parcel across the street.

On or about August 24, 1995, the Petitioner, Edith Tabachnick, filed a

petition to remove Petitioner, Fred Davis, as administrator of the estate because of unsuitability and for waste of assets and neglect. This petition was allowed on March 5, 1996 by Bristol County Probate Judge Elizabeth O'Neill Lastaiti. In that order the judge stated that there was no need to appoint a successor administrator because the only issue remaining was the distribution of the real estate, which passed by law, between the three remaining heirs at the death of the decedent, David Miller. The judge stated that if the parties could not resolve their differences one of the heirs would have to file a Petition to Partition. Based on this order the respondents' erroneously interpreted this ruling and filed a motion to compel the respondent to sell the property, Justice

Prudence McGregor of the Bristol County Probate Court correctly denied this motion.

The Petitioners appealed this decision but, as result of respondent's opposition motion, that appeal was correctly dismissed by Judge LaStaiti on May 7, 1996, because Petitioners had failed to comply with Rule 8 (b) (3) of the Massachusetts Rules of Appellate Procedure and because that failure was due to "inexcusable neglect". The Judge further ordered that "no other pleadings of any type, with the exception of a Petition to Partition, may be filed in *this* court".

On May 30, 1996 the Petitioners filed a notice of appeal of Judge LaStaiti's

May 7, 1996 order. On June 11, 1996 the Appeal Court's Honorable Roderick Ireland denied Petitioner's appeal "without hearing". On June 13, 1996 Petitioners filed a motion for clarification of Judge Ireland's decision and a motion for clarification of his June 11, 1996 order which was denied on June 26, 1996. The notice of appeal was also struck on this same date.

On July 8, 1996 the Petitioners filed an appeal with the Massachusetts Supreme Judicial Court pursuant to Massachusetts General Laws, chapter 211, section. 3. This appeal was denied without hearing by Justice John Greaney on October 23,1996. They appealed to the full court of the Massachusetts Supreme Judicial Court, were granted oral argument and the full

Court correctly affirmed the single justice's denial of their petition for relief.

The Petitioners, throughout this whole ordeal, have been given every opportunity to convince several appellate courts that there is any merit to any of their baseless claims. And each and every court that has reviewed there claims has properly dismissed that appeal or affirmed the earlier ruling, And in so doing they have neither violated any Federal or State rights of the Petitioners, or even addressed any Federal questions of law, as these issues were never properly before any lower appellate courts nor are they properly before this Court.

REASONS FOR DENYING THE WRIT

First and foremost, The Massachusetts Supreme Judicial Court correctly decided this case as a matter of Massachusetts Appellate law. In deciding this case, the Court in this matter interpreted Massachusetts case law and its own rules of appellate procedure, and therefore, independent and adequate State Grounds support the judgment of the Massachusetts Supreme Judicial Court. It did not address, and properly so, any Federal questions of law or statutes as these issues were not before the Massachusetts Supreme Judicial Court. The decision below was plainly correct application of settled law, and no conflict among the circuits is even alleged.

Furthermore, the questions presented as framed by the Petitioners, are not of sufficient importance to justify this Court's exercise of its certiorari power. The very fact that the majority of Respondent's issues, have not arisen before suggest that it does not go beyond "the academic or the episodic." Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1955). While the issues may be "important" to the Petitioners, they have not shown that it is important to the public at large. Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387, 393 (1923). Respondent respectfully submits that this Court ought not squander its resources reviewing an issue of marginal importance, particularly in light of the substantive flaws presented in the argument in support of the Petition as

well as the substantive flaws in the issues presented to this Court by the Petitioner.

I. INDEPENDENT AND ADEQUATE STATE GROUNDS SUPPORT THE JUDGMENT OF THE MASSACHUSETTS SUPREME JUDICIAL COURT.

The essence of the holding of the Massachusetts Supreme Judicial Court below was that the Petitioners failed to comply the Massachusetts Rules of Appellate procedure and that they could have availed themselves of other relief available to them under Massachusetts Probate Rules and remedies provide under Massachusetts case law. Petition App 20. The Massachusetts Supreme Judicial Court did not analyze nor did they even address, Petitioners contentions of

alleged violations of their rights under the United States Constitution, Amendments V and XIV. These issues were not properly before that Court.

Wherever it appears that the decision of a state court "might" have rested on an independent and adequate nonfederal ground, the Supreme Court lacks jurisdiction to review it. Ellis v. Dixon, 349 U.S. 458, 459 (1955); Stembridge v Georgia, 343 U.S. 541, 547 (1952). Thus this Court has declined to undertake review of state court decisions when it has not affirmatively appeared from the record that a decision on a federal question was necessary to the determination of the case. Durley v. Mayo, 351 U.S. 277, 281 (1956). See Black v. Cutter Laboratories, 351 U.S. 292,

299-300 (1956). Here its is certain that the Supreme Judicial Court's decision not only might have, but most certainly did, rest on an interpretation of Massachusetts case law and its own rules of appellate procedure. Accordingly, the Petition should not be granted.

II. THE DECISION BELOW CONFLICTS WITH NO FEDERAL AUTHORITY, AND ITS CORRECTNESS PRESENTS NO QUESTION OF SUFFICIENT IMPORTANCE TO JUSTIFY REVIEW BY CERTIORARI.

The Petitioners have not even attempted to assert, and rightfully so, that the decision of the Massachusetts Supreme Judicial Court "squarely conflicts with decisions of this Court and Federal Courts of Appeals." They have

cited no relevant federal case law as pertains to the issues they would have this Court take up, and in fact no such case law exists.

Furthermore, the questions presented as framed by the Petitioners, are not of sufficient importance to justify this Court's exercise of its certiorari power. The very fact that the majority of respondent's issues, have not arisen before suggest that it does not go beyond "the academic or the episodic." Rice v. Sioux City Cemetery, 349 U.S. 70, 74 (1955). While the issues may be "important" to the Petitioners, they have not shown that it is important to the public at large. Layne & Bowler Corp. v. Western Well Works, 261 U.S. 387, 393 (1923).

III. RESPONDENT PRESENTS NO VALID JURISDICTIONAL GROUNDS FOR THIS PETITION TO BE PROPERLY BEFORE THIS COURT.

The Respondent fails to state the specific jurisdictional grounds for this Petition to be properly before the Court. In Respondent's brief the Respondent vaguely asserts Section 28 of the United States Code as its jurisdictional grounds. This is purposefully vague as there is no valid jurisdictional ground that would permit Respondents' Petition to be properly before this Court. Therefore Respondent's Petition should be dismissed.

CONCLUSION

This case was decided solely on interpretation of Massachusetts case law and its rule of Appellate procedure and therefore independent and adequate state grounds support the judgment of the Massachusetts Supreme Judicial Court. The Massachusetts Supreme Judicial Court opinion that is the subject of this appeal conflicts with no Federal authority, and its correctness presents no question of sufficient importance to justify review by certiorari.

For all of these reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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